IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Govinda & Another Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.980/2002)

2. Manphool Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1222/2006)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 2-7-2002 in Sessions Case No.65/1997 (BT No.61/1998) passed by Ms. Chandra Kala Yadav, RHJS, Additional Sessions Judge Dausa.

Date of Judgment: February 28, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Hari Prasad Verma] for the appellants.
Mr. S.C.Gupta]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in these appeals is to the judgment dated July 2, 2002 of the learned Additional Sessions Judge Dausa whereby Govinda, Meetha Lal and Manphool, the appellants before us, were convicted under section 302/34 IPC to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer three months rigorous imprisonment.

2. It is the prosecution case that on July 8, 1997 at 11 AM a written report (Ex.P-8) was handed over by Moolya (Pw.6) at the Police Station Nangal Rajawatan District Dausa wherein it was stated that dead

body of Kanhaiya was lying near Jansi's Thadi (small shop). On that report a case under section 302 IPC was registered and investigation commenced. Dead body of Kanhaiya was subjected to autopsy, statements of witnesses under section 161 CrPC were recorded, necessary memos were drawn, the appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Dausa. Charges under sections 302/34 and 201 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 26 witnesses and exhibited 23 documents. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated herein above.

3. As per Post Mortem report (Ex.P-4) following ante mortem injuries were found on the dead body:-

1. Bruise 14cm x 8cm size with abrasion over it on the left parietal region of the scalp. A localized swelling about 15cm x 10cm is found at the region, dried blood clot is found.
2. Abrasion 3cm x 1cm size is found on the left parietal region of the scalp anterior to the injury No.one dried blood clot is present over it.
3. Lacerated wound 1.25cm x 0.75 cm size on the outer part of the left eye brow dried blood clot present.
4. Bruise with swelling on the Rt. side face 8cm x 4cm size below the Rt. eye extending to the Rt. alabose.
5. Multiple bruises extending on nipple of the ant. aspect of the Rt. side chest & adjoining sternal region.
6. Bruise 12cm x 8cm size on the rt. side suprapubic & adjoining iliac region of the abdomen.
7. Two abrasions on the rt. side adjoining part of the back of the chest near each other measuring 10cm x 2.5cm & 8cm x 2cm

size respectively dried blood clot present.

The cause of death as per the autopsy report was coma due to extra dural haematoma following rupture of the left middle meningeal artery & trauma to the vital organ the brain.

4. We have heard learned counsel for the parties and perused the material on record.

5. Coming to the prosecution evidence we notice that the prosecution examined Kilan (Pw.2) and Smt. Kali (Pw.11) to establish that the appellants came to the house of deceased and took him with them. In addition to these witnesses evidence of other eye witnesses has also been adduced. We therefore proceed to consider the evidence on which reliance has been placed by the learned trial Judge. Gordhan (Pw.1) in his deposition stated that on the date of incident around 10 PM he had gone on a vehicle to the place of Devta to put incense sticks. There he saw in the light of his vehicle Manphool, Meetha and Ramchandra who were giving beating to Kanhaiya. In his cross examination he however admitted that he was not a regular visitor of the place of Devta. He also stated that he did not narrate the incident to anybody because of fear but he lodged the report on the next day. Kilan (Pw.2) brother of deceased stated that on July 7, 1997 around 8 PM the appellants took Kanhaiya with them. This fact was however not mentioned in his police statement Ex.D-1. Shankar (Pw.3) in his examination in chief deposed that he had seen Meetha, Ramchandra and Manphool given beating to Kanhaiya, but in his cross examination he stated that the police never recorded his statement. Onkar (Pw.4) deposed that in an injured condition when he had gone to Arniya, he saw Meetha, Govinda and

Ramcharan given beating to Kanhaiya. He however disowned his police statement Ex.D-3 where he did not state so. He further stated that since it was dark night he could not see anything. Hari Ram (Pw.7), Shri Narayan (Pw.8) and Kalu Ram (Pw.10) deposed that although they did not see the struggle, they recognised Manphool, Govinda, Meetha and Ramchandra from their voices. Smt.Kali (Pw.11) deposed that Meetha Lal and Govinda came to the house of Kanhaiya and took him with them. Shravan (Pw.14) deposed that around 10.30 PM when he was passing near the patol of Ramphool he saw Meetha Lal, Manphool, Govinda and Ramchandra given beating to Kanhaiya. He however did not intervene but went to Jaipur and when after 2-3 days he returned back to the village he came to know that Kanhaiya was dead. Mishri Lal (Pw.15) deposed that when he was passing near the patol of Ramchandra he saw that Meethya and Manphool were giving beating to Kanhaiya. He also did not narrate the incident to anybody but went to Jaipur. In his cross examination he however stated that he could not see the incident because it was dark night.

6. From the conjoint reading of the statements of the witnesses it may be noticed that the brother and wife of the deceased on one hand deposed that the appellants came to their house on the preceding night of the incident and took the deceased with them, on he other hand certain witnesses stated that the incident was actually seen by them. All these so called eye witnesses some how reached at the place of incident in the odd hour of dark night. The reasons that have been assigned by these witnesses to establish their presence are not convincing.

7. Law in regard to appreciation of evidence of chance witnesses

is well settled in Ismail Vs. Momin (AIR 1941 Privi Council 11) it was held that though the chance witness is not necessarily a false witness, is proverbially rash to act upon such evidence. In the case of a chance witness, if that witness gives sufficient reasons for his presence, that evidence can be accepted. In Baldev Singh Vs. State of MP (2003)9 SCC 45, where chance witness failed to assign any convincing reason for being at the place of incident at that abnormal hour of the day in full summer the Apex Court held that testimony of such witnesses could not be relied upon. The expression `chance witness' is borrowed from the countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. In the instant case since the prosecution witnesses have failed to assign any convincing reason about their presence at the place of incident, we find their testimony highly unbelievable. As already noticed some of the witnesses recognised the appellants from their voices and some gave parrot like narration of the incident that the appellants were giving beating to the deceased. It is difficult to believe that in the dark night they possibly could see the incident.

8. Merely on the basis of evidence of brother and wife of the deceased that the appellants came to their house and took the deceased with them to check `flour mill', sure conclusion that the appellants are guilty cannot be arrived at. Suspicion however strong cannot take the place of proof. In Ashish Batham Vs. State of M.P. (2002)7 SCC 317, their Lordships of Supreme Court indicated thus:-

> “Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery

> system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the henious nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

9. In view of the incongruities of the prosecution case we are of the view that the evidence collected by the prosecution is not qualitatively such that on every reasonable hypothesis the conclusion is that the appellants are guilty. We do not find a combination of facts creating a network through which there is no escape for the appellants. In our opinion the appellants are entitled to benefit of doubt. Learned trial Judge in our opinion has committed error in convicting and sentencing the appellants. The charge under section 302/34 IPC is not established against the appellants beyond the reasonable doubt.

10. For the reasons stated above, we allow the appeals and set aside the impugned judgment dated July 2, 2002 passed by learned Additional Sessions Judge Dausa. We acquit the appellants Govinda, Meetha Lal and Manphool of the charge under section 302/34 IPC. The appellants Govinda and Meetha Lal are on bail, they need not surrender and their bail bonds

stand discharged. The appellant Manphool, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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